

SNOW, CHRISTENSEN & MARTINEAU  
John R. Lund (Utah State Bar No. 4368)  
Kara L. Pettit (Utah State Bar No. 8659)  
10 Exchange Place, Eleventh Floor  
P.O. Box 45000  
Salt Lake City, Utah 84145-5000  
Telephone: 801-521-9000  
*Attorneys for ASC Utah, Inc. and  
American Skiing Company*

---

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DIVISION OF UTAH, CENTRAL DIVISION**

---

WOLF MOUNTAIN RESORTS, L.C., a  
Utah limited liability company,

Plaintiff,

vs.

ASC Utah, Inc., a Maine corporation; and  
AMERICAN SKIING COMPANY, a  
Delaware corporation,

Defendants.

**MOTION FOR SUMMARY JUDGMENT**

**ORAL ARGUMENT REQUESTED**

Case No. 2:09-CV-1094

Judge David O. Nuffer

---

Defendants ASC Utah, Inc. and American Skiing Company (collectively, “ASCU”) move to dismiss the Complaint pursuant to Federal Rule of Civil Procedure 56(c) and Utah Rule of Civil Procedure 13(a). The ground for this motion is that the claim for alleged underpayment of rent in the Complaint should have been asserted as a compulsory counterclaim in pending state court litigation between the parties. ASCU brought a Complaint in Utah state court in 2006 for a declaration that it had not breached the provision of the Ground Lease between the parties governing rent payments; the claim in this lawsuit arose out of that same transaction, and it is therefore a compulsory counterclaim. Even if this Court decided that this claim does not

constitute a compulsory counterclaim in the state court litigation, Wolf still should have raised it in the state court litigation to keep all claims regarding underpayment of rent before one judge. Wolf's choice to file a separate lawsuit in federal court results in piecemeal litigation and violates the common law principle against claim-splitting.

The claim raised in this lawsuit also could have and should have been brought as part of another pending case filed in this Court by Plaintiff Wolf Mountain Resorts, L.C. ("Wolf"), *Wolf Mountain Resorts, L.C. v. ASC Utah, Inc.*, Case No. 2:08cv191 ("First Federal Rent Case"). The First Federal Rent Case alleges underpayment of rent, and Wolf's attempt in this lawsuit ("Second Federal Rent Case") to assert the same thing is improper claim-splitting. The date to amend pleadings in the First Federal Rent Case had already expired when Wolf filed the Second Federal Rent Case, and the Complaint should be dismissed with prejudice because Wolf is using the Second Federal Rent Case to assert claims it should have asserted through a timely Amended Complaint in the First Federal Rent Case.

This motion is accompanied by a supporting memorandum. ASCU requests oral argument on the motion.

DATED this 7<sup>th</sup> day of January, 2010.

SNOW, CHRISTENSEN & MARTINEAU

By /s/ Julianne P. Blanch

John R. Lund

Kara L. Pettit

Julianne P. Blanch

***Attorneys for Defendants ASC Utah, Inc. and  
American Skiing Company***

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of January, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

David M. Wahlquist  
Rod N. Andreason  
Kirton & McConkie  
60 East South Temple, Suite 1800  
P.O. Box 45120  
Salt Lake City, Utah 84145-0120

/s/ Leslie McDeavitt  
Legal Assistant

1300596.doc